

Appendix F to DIR Contract No. DIR-SDD-2108

Agreement for Machines

This Agreement is subject to the terms of the DIR Contract, DIR-SDD-2108. In the event of conflict between the terms of this Agreement and DIR Contract No. DIR-SDD-2108; the DIR's contract terms shall control. This IBM Agreement for Machines (called the "Agreement") governs transactions by which you purchase Machines from International Business Machines Corporation ("IBM").

1. Definitions

Customer-set-up Machine is an IBM Machine that you install according to IBM's instructions.

Date of Installation is the following:

- 1) for an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if you defer installation, makes it available to you for subsequent installation by IBM; and
- 2) for a Customer-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period.

Enterprise is any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term "Enterprise" applies only to the portion of the Enterprise located in the United States.

Licensed Internal Code (called "LIC") is Machine Code used by certain Machines IBM specifies (called "Specific Machines").

Machine is a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment) that IBM may provide to you.

Machine Code is microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, and diagnostics delivered with an IBM Machine.

Specifications is a document that provides information specific to a Machine. IBM provides an IBM Machine's Specification in a document entitled "Official Published Specifications."

2. Agreement Structure

IBM provides additional terms for Machines in documents called "Attachments" and "Transaction Documents" which are also part of this Agreement. All transactions have one or more associated Transaction Documents (such as an invoice, supplement, schedule, exhibit, or addendum).

If there is a conflict among the terms in the various documents, those of an Attachment prevail over those of this Agreement. The terms of a Transaction Document prevail over those of both of these documents.

You accept the terms in Attachments and Transaction Documents by 1) signing them, 2) using the Machine, or allowing others to do so, or 3) making any payment for the Machine.

A Machine becomes subject to this Agreement when IBM accepts your order and sends you a Transaction Document.

3. Charges and Payments

The amount payable for a Machine will be based on one-time charges.

Charges

You receive the benefit of a decrease in charges for amounts which become due on or after the effective date of the decrease.

Payment

Payment shall be in accordance with Section 7.C. of Appendix A of the DIR Contract No. DIR-SDD-2108.

4. Changes to the Agreement Terms

For a change to be valid, both of parties must sign it. Additional or different terms in any written communication from either party (such as an order), not approved by executed amendment in accordance with DIR Contract No. DIR-SDD-2108 are void.

5. IBM Business Partners

IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Machines. When you order IBM Machines (marketed to you by IBM Business Partners) under this Agreement, IBM confirms that it is responsible for providing the Machines to you under the warranties and other terms of this Agreement.

IBM is not responsible for 1) the actions of IBM Business Partners, 2) any additional obligations they have to you, or 3) any products or services that they supply to you under their agreements.

6. Production Status

Each IBM Machine is manufactured from parts that may be new or used. In some cases, a Machine may not be new and may have been previously installed. Regardless, IBM's appropriate warranty terms apply.

7. Delivery

IBM will use commercially reasonable efforts to meet your delivery requirements for Machines you order, and will inform you of their status. Transportation charges, if applicable, will be specified in a Transaction Document.

8. Title and Risk of Loss

When IBM accepts your order, IBM agrees to sell you the Machine described in a Transaction Document. For each Machine, IBM bears the risk of loss or damage up to the time it is delivered to You or Your designated location. Thereafter, you assume the risk.

9. Installation

You agree to provide an environment meeting the specified requirements for the Machine.

IBM has standard installation procedures. IBM will successfully complete these procedures before it considers an IBM Machine (other than a Machine for which you defer installation or a Customer-set-up Machine) installed. You are responsible for installing a Customer-set-up Machine and, unless the parties agree otherwise, a non-IBM Machine.

IBM sells features, conversions, and upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial-numbered Machine. Many of these transactions involve the removal of parts and their return to IBM. As applicable, you represent that you have the permission from the owner and any lien holders to 1) install features, conversions, and upgrades and 2) transfer ownership and possession of removed parts (which become IBM's property) to IBM. You further represent that all removed parts have not been modified by you without IBM's permission. A part that replaces a removed part will assume the warranty or maintenance service status of the replaced part. You agree to allow IBM to install the feature, conversion, or upgrade within 30 days of its delivery. Otherwise, IBM may terminate the transaction and you must return the feature, conversion, or upgrade to IBM at your expense.

10. Machine Code and LIC

Machine Code is licensed under the terms of the agreement provided with the Machine Code. Machine Code is licensed only for use to enable a Machine to function in accordance with its Specifications and only for the capacity and capability for which you are authorized by IBM in writing and for which payment is received by IBM.

Certain Machines IBM specifies (called "Specific Machines") use LIC. IBM will identify Specific Machines in a Transaction Document. International Business Machines Corporation, one of its subsidiaries, or a third party owns LIC including all copyrights in LIC and all copies of LIC (this includes the original LIC, copies of the original LIC, and copies made from copies). LIC is copyrighted and licensed (not sold). LIC is licensed under the terms of the agreement provided with the LIC. LIC code and all its functions listed under the terms of the agreement must be identified to Customer prior to acquisition. LIC is licensed only for use to enable a Specific Machine to function in accordance with its Specifications and only for the capacity and capability for which you are authorized by IBM in writing and for which payment is received by IBM.

11. Warranty

If a Machine is subject to federal or state consumer warranty laws, these warranty laws apply in place of IBM's statement of limited warranty included with the Machine.

IBM warrants that each IBM Machine is free from defects in materials and workmanship and conforms to its Specifications. The warranty period for a Machine is a specified, fixed period commencing on its Date of Installation. During the warranty period, IBM provides repair and exchange service for the Machine, without charge. If a Machine does not function as warranted during the warranty period and IBM is unable to either 1) make it do so, or 2) replace it with one that is at least functionally equivalent, you may return it to IBM and your money will be refunded.

The warranty will not apply to the extent that there has been misuse (including but not limited to use of any Machine capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, improper maintenance by you, or failure caused by a product for which IBM is not responsible. The warranty is voided by removal or alteration of Machine or parts identification labels.

THIS WARRANTY IS YOUR EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

IBM does not warrant uninterrupted or error-free operation of a Machine or that IBM will correct all defects.

IBM will identify IBM Machines that it does not warrant.

Unless IBM specifies otherwise, IBM provides non-IBM Machines WITHOUT WARRANTIES OF ANY KIND. However, non-IBM manufacturers, suppliers, or publishers may provide their own warranties to you.

12. Warranty Service

IBM provides certain types of service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform you of the available types of service for a Machine. At its discretion, IBM will 1) either repair or exchange the failing Machine and 2) provide the service either at your location or a service center.

When the type of service requires that you deliver the failing Machine to IBM, you agree to ship it suitably packaged to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will return it to you at its expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, your Machine while it is 1) in IBM's possession or 2) in transit in those cases where IBM is responsible for the transportation charges.

You agree to:

- 1) obtain authorization from the owner to have IBM service a Machine that you do not own; and
- 2) where applicable, before IBM provides service –
 - a. follow the problem determination, problem analysis, and service request procedures that IBM provides,
 - b. secure all programs, data, and funds contained in a Machine, and
 - c. inform IBM of changes in a Machine's location.

The replacement must be new or like new. The replacement assumes the warranty service status of the replaced item. Before IBM exchanges a Machine or part, you agree to remove all features, parts, options, alterations, and attachments not under IBM's service. You also agree to ensure that the item is free of any legal obligations or restrictions that prevent its exchange.

Some parts of IBM Machines are designated as Customer Replaceable Units (called, "CRUs"), e.g., keyboards, memory, or hard disk drives. IBM provides CRUs to you for replacement by you. You must return all defective CRUs to IBM within 30 days of your receipt of the replacement CRU. You are responsible for downloading designated Machine Code and LIC updates from an IBM Internet Web site or from other electronic media, and following the instructions that IBM provides.

Any feature, conversion, or upgrade IBM services must be installed on a Machine which is 1) for certain Machines, the designated, serial-numbered Machine and 2) at an engineering-change level compatible with the feature, conversion, or upgrade.

Warranty service does not cover accessories, supply items, and certain parts, such as batteries, frames, and covers.

IBM manages and installs selected engineering changes that apply to IBM Machines.

Warranty Service Upgrade

For certain Machines, you may select a service upgrade from the standard type of warranty service for the Machine. Additional terms may apply to such service upgrade. IBM charges for the service upgrade during the warranty period.

13. Patents and Copyrights

Patents and Copyrights shall be in accordance with Section 9.A of Appendix A of the DIR Contract No. DIR-SDD-2108.

14. Limitation of Liability

Limitation of Liability shall be in accordance with Section 9.K of Appendix A of the DIR Contract No. DIR-SDD-2108.

15. General Principles of Our Relationship

- 1) Neither of us grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- 2) Each of us is free to enter into similar agreements with others.
- 3) Each of us grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted.
- 4) Each of us will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations.
- 5) Force Majeure shall be in accordance with Section 10.C of Appendix A of the DIR Contract No. DIR-SDD-2108. Assignments shall be in accordance with Section 4.D of Appendix A, of the DIR Contract No. DIR-SDD-2108. You agree to acquire Machines with the intent to use them within your Enterprise and not for reselling, leasing, or transferring to a third party, unless either of the following applies:
 - a. you are arranging lease-back financing for the Machines; or
 - b. you purchase them without any discount or allowance, and do not remarket them in competition with IBM's authorized remarketers.
- 6) You agree to allow IBM to install mandatory engineering changes (such as those required for safety) on a Machine at IBM's risk and expense.
- 7) You agree that you are responsible for the results obtained from the use of the Machines.
- 8) You agree to provide IBM with sufficient, free, and safe access to your facilities and systems for IBM to fulfill its obligations. You agree to comply with all applicable export and import laws and regulations.

16. Agreement Termination

Termination shall be in accordance with Section 10.B. of Appendix A of the DIR Contract No. DIR-SDD-2108.

17. Geographic Scope and Governing Law

The rights, duties and obligations of each of us are valid only in the United States, unless specifically granted otherwise.

Both you and IBM consent to the application of the laws of the **State of Texas** to govern, interpret, and enforce all of your and IBM's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles. Nothing herein will waive the sovereign immunity of DIR or Customer.

In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

Agreed to:

Customer Company name:

Agreed to:

International Business Machines Corporation

By _____

Authorized Signature

Name (type or print):

Date:

Enterprise number:

Enterprise address:

By _____

Authorized Signature

Name (type or print):

Date:

Agreement number:

IBM address:

After signing, please return a copy of this Agreement to the "IBM address" shown above.